

MANDATORY OBSERVER COVERAGE OF FISHERIES IN THE ATLANTIC OCEAN

Dear Fishery Participant:

This notice contains essential information regarding mandatory observer coverage of fisheries in the Atlantic Ocean and ***NEW VESSEL SAFETY INSPECTION REQUIREMENTS***. It is for the vessel owner or operator of vessels holding a Federal fishing permit or participating in any fishery listed as a Category I or Category II fishery under the Marine Mammal Protection Act (MMPA). If requested to carry a NMFS-certified observer, a vessel may not engage in any fishing operations in the following fisheries unless a NMFS certified observer is on board, or the requirement has been waived: Northeast multispecies groundfish; Atlantic mackerel, squid, and butterfish; Atlantic sea scallop; monkfish; summer flounder, scup, and black sea bass; Atlantic bluefish; Atlantic herring; spiny dogfish; Atlantic deep-sea red crab; and tilefish [50 CFR § 648.11].

MMPA Category I and II fisheries include: mid-Atlantic coastal gillnet; Northeast sink gillnet; large pelagics longline; Northeast and mid-Atlantic American lobster pot; Atlantic squid, mackerel, and butterfish trawl; North Carolina inshore gillnet; Northeast anchored float gillnet; Northeast drift gillnet; Southeast Atlantic gillnet; Southeastern U.S. Atlantic shark gillnet; Atlantic herring midwater and pair trawl; Atlantic blue crab pot; mixed species pot; mid-Atlantic beach seine; North Carolina long haul seine; North Carolina roe mullet stop net; and Virginia pound net [List of Fisheries for 2004, 69 FR 48408, August 10, 2004 and 50 CFR § 229.2].

This letter is official notification of your obligation to comply with the regulations that require vessels to carry observers on any or all fishing trips as directed by the National Marine Fisheries Service (NMFS) or the designated contractor [50 CFR § 229.7(c)]. For these requirements, the vessel operator is presumed to be acting as the agent of the owner unless the Regional Administrator, Northeast Region is advised otherwise. The vessel owner is responsible for all activities of an agent or employee resulting in violations of the applicable regulations.

Currently, the level of observer coverage ranges from 5% or less for some fisheries to 50% of the U.S./Canada Management Area trips and Special Access Programs. Coverage levels are set after consideration of the type of analysis needed, the availability and validity of additional supporting data, and the allocation of funding.

The vessel owner, directly or through an agent or employee, is responsible for complying with regulations that provide for exceptions for the serious injury and mortality of marine mammals incidental to commercial fishing operations from

the Marine Mammal Protection Act's (MMPA) general moratorium and with the following conditions that NMFS developed to ensure the effective deployment and safety of observers.

Observers will collect data for use in the management of commercial fisheries, research on bycatch reduction, and monitoring of protected species and incidental takes. Observer duties include:

- conducting marine mammal haul watches;
- recording the incidental take of protected species;
- recording kept and discard catch weights and sizes;
- conducting biological sampling of catch and collection of specimens;
- measuring various gear characteristics, such as mesh size;
- asking the captain questions regarding the costs of fishing; and
- leaving the captain with a Fishermen's Comment Card and Data Release Form.

Safety Requirements (*NEW REQUIREMENTS FOR ALL VESSELS*)

As of May 1, 2006 all vessels required to carry an observer must meet United States Coast Guard (USCG) safety requirements and display a current Commercial Fishing Vessel Safety Examination Decal (issued within the previous two years). Vessels that do not have a current safety decal are deemed unsafe for purposes of carrying an observer and must correct noted safety deficiencies before departing to fish with the observer [50 CFR § 600.746(d)(2)]. Vessels that are required to carry an observer, but are inadequate or unsafe for purposes of carrying an observer, are prohibited from fishing without observer coverage [50 CFR § 600.746(f)]. Enforcement action may result when a vessel is required to take an observer, does not meet the safety requirements thereby not being able to take an observer, and they continue to fish.

The vessel owner or operator must allow an observer, NMFS, or our designated observer service provider to visually inspect any safety or accommodation requirement if requested [50 CFR § 600.746(c)(2)]. Observers are **required** to complete a pre-trip safety check of the emergency equipment and are encouraged to review emergency instructions and drills with the operator prior to the vessel departing port.

If you need to schedule a dockside examination, call your nearest Marine Safety Office Dockside Examiner:

Portland, ME	(207) 780-3256
Boston, MA	(617) 223-3045
Providence, RI & Cape Cod	(508) 999-0072
Long Island Sound (CT, NY)	(203) 468-4437
Baltimore, MD	(410) 576-2526
Hampton Roads, VA	(757) 668-5535

Philadelphia, PA (215) 271-4852
Willmington, NC (910) 772-2231
Atlantic Beach, NC (252) 247-4562

Accommodations

Vessels must provide assigned observers with accommodations that are comparable to those provided to full crew members unless other arrangements have been approved in advance of the trip by the NMFS contracted observer service provider.

Accommodations include the same food, toilet, bathing, sleeping accommodations, and amenities that are equivalent to those provided to the crew. For multiple-day trips, a meal reimbursement of \$25 per day is available upon completion of the Meal Reimbursement Form available from the observer, or on-line at the observer program website.

Prohibitions

Failure to take an observer on a fishing trip: it is unlawful to fail to take an assigned observer on a fishing trip [50 CFR § 229.7(c)(1)].

Harassment of an observer: it is unlawful for any person to assault, harm, harass, (including sexual harassment), oppose, impede, intimidate, impair, or in any way influence or interfere with an observer, or to attempt the same. This includes any action which has the purpose or effect of interfering with the observer's responsibilities, or which creates an intimidating, hostile, or offensive environment [50 CFR § 229.3(b)].

Violations of the MMPA may result in sanctions on Authorization Certificates, civil penalties of up to \$12,000 and criminal penalties. A complete list of MMPA prohibitions can be found at 50 CFR § 229.3. Violations of the MSA may result in sanctions on Federal fisheries/operator permits, civil penalties up to \$120,000 per violation, civil forfeiture of catch/vessel, and/or criminal penalties.

Expectations At Sea

For your reference, the following is a summary describing an observer's and a captain's expectations when an observer is assigned aboard a vessel.

Observers should:

- collect objective data on fishing activity, the take of target and non-target species and selected specimen samples;
- perform their duties in such a manner as to minimize interference with fishing operations;
- keep open communication with vessel personnel by informing them about observer duties and collected data;

- be on deck, unless deemed unsafe due to severe weather conditions, to observe hauls and collect biological information on weight and size of catch;
- for observed hauls, be recording all kept and discarded fish, sharks, crustaceans, invertebrates, debris, marine mammals, sea birds, and sea turtles;
- for unobserved hauls, be recording kept catch information;
- take actual weights as often as possible, otherwise estimates or extrapolations are used;
- follow a priorities table to determine which species to measure and sample;
- use work cameras for photographing specimens;
- obtain permission from the vessel captain before using any boat equipment;
- collect data on the use and condition of pingers;
- collect whole specimens as instructed by NMFS and clean up thoroughly afterward;
- bring issued safety and sampling gear;
- perform a pre-trip safety inspection, ask the captain about emergency procedures, and familiarize themselves with the locations of life rafts, EPIRB, fire extinguishers, and first aid kits; and
- share housekeeping routines such as dish washing and head clean-up with the crew.

Observers should not:

- dictate procedures, direct fishing operations, or provide regulatory guidance;
- be involved with crew responsibilities such as standing bridge watch or helping with fishing;
- compromise data or record extemporaneous or personal comments;
- conduct personal research of any kind, or keep specimens or edible fish of any kind;
- keep personal diaries, bring aboard personal recording devices, personal computers, or personal cameras of any type;
- damage the quality of the landed catch;
- talk about any boat's business while aboard another boat or to any fishermen dockside;
- offer any form of payment or gifts to the crew that are not NMFS-approved;
- accept any form of payment or gifts from the vessel or crew for any reason;
- stay on vessel after the trip is completed; or
- consume alcohol or engage in any illegal activities on the vessel.

Captains should:

- cooperate with the observer in the performance of the observer's duties;

- provide observer's living quarters comparable to a full crew member;
- provide the same meals and amenities provided to crew members;
- allow the observer access to areas of the vessel necessary to conduct observer duties;
- allow the observer access to communication and navigation equipment, as necessary to perform observer duties;
- notify the observer when commercial fishing operations are to begin and end;
- provide true vessel locations by latitude and longitude upon request by the observer;
- bring aboard marine mammals, sea turtles and sea birds that were killed during fishing operations for biological processing that are readily accessible to crew members, if requested by the observer;
- provide refrigerated storage space for observer collected specimens; and
- comply with other guidelines, regulations or conditions that NMFS may provide in writing to ensure the effective use of observers.

Captains should not:

- assault, harass or sexually harass, intimidate or attempt to influence observers, interfere with or impede observer duties;
- ask observers to stand watch or help with fishing operations; or
- fish without an observer on board the vessel after the owner or agent of the owner has been directed by NMFS or the NMFS contracted observer service provider to make accommodations available for an observer.

Questions involving the above conditions or the management of the observer program should be directed to the Northeast Fisheries Observer Program, NMFS, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, Massachusetts, 02543, or call David Potter at (508) 495-2262. Additional information about the observer program, such as the proposed sea day schedule, summary reports, sampling manual, and observer forms is available online at: <http://www.nefsc.noaa.gov/femad/fsb/> or by contacting the Observer Program Outreach Coordinator, Amy Van Atten at 508-495-2266.

Neither the designated NMFS contracted observer service provider, nor the observer assigned aboard the vessel have the authority to modify these instructions or provisions. Any modification will be made in writing by the Regional Administrator, Northeast Region.